

EAC Efforts Regarding Its Responsibilities under the NVRA

GENERAL DISCUSSION OF RESOURCES:

When the National Voter Registration Act (NVRA) first passed, the Federal Election Commission (FEC) had four full time staff working on NVRA implementation. In addition, at least two attorneys from the Office of the General Counsel worked on promulgating the initial regulations. After 13 months, the FEC published final rules in the *Federal Register*. Five months later, the FEC created the National Voter Registration Form. However, we do not have a record of the financial resources FEC utilized during this process.

NVRA is the responsibility of the EAC's Election Administration Support Division, which also handles the management of HAVA funds, the Help America Vote College Program, and the EAC Language Accessibility Program. Currently, the EAC has no full time staff allocated to NVRA issues.

NVRA REGULATIONS/FEDERAL FORM (*Total time: 18 – 28 Months*). The NVRA (as amended by HAVA) tasks the EAC to (1) develop a Federal, uniform voter registration form that must be accepted and used by states, and (2) publish regulations as necessary to develop the Federal Form and report to Congress on the impact of the NVRA. The following are the steps EAC staff believes are needed to carry out EAC's regulatory authority and responsibilities under the NVRA.

1. **Scope of Regulations (1- 2 Months).** The FEC originally took a limited approach in exercising its NVRA regulatory authority. It limited its regulations to those steps needed to gather information from states. The voter registration landscape has changed considerably since the passage of NVRA. States are passing legislation impacting this area beyond voter eligibility requirements (i.e. proving eligibility and regulating voter registration groups).
 - a. Policy Issues (what should EAC do)
 - b. Legal Authority Issues (what can EAC do)
 - c. Practical Issues (what is EAC capable of doing)
2. **Development of Code of Federal Regulations (CFR) Site Plan (1 - 2 Months).** The EAC must develop its CFR cite. We have begun the process of securing its CFR cite, which will probably be Title 11 (Federal Elections), Chapter 2.
3. **Advanced Notice of Proposed Rule Making (3 Months).** The Advanced Notice of Proposed Rule Making (ANPRM) allows the public to provide comments to EAC prior to the development of proposed rules. The ANPRM would provide a discussion of the scope of the proposed regulations determined by the Commission and would coincide with the initial information gathering and research phase.
4. **Contract for Managing Comments and Web Portal (.5 – 2 Months).** The EAC will need assistance in the collection, organization, management and review of comments. This would include an electronic, web-based means of collecting comments (per previous EAC experience).

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- 5. Research/Information Gathering/Working Groups/Hearings (4 – 7 Months).** EAC must initiate an inclusive, transparent process to gather information on state needs, the concerns of voter registration groups, and the interests of voters. The production of formal and expedient research in this area, including surveys and data collection, would also be helpful. Holding hearings throughout the country (6-8) over a three-month period would greatly benefit the process by getting public input from election officials, advocacy groups, and members of the public that would not normally be able to travel to Washington to participate in the process. Finally, getting working groups consisting of election officials, advocacy groups, and other interested parties together to talk with staff in an open, small group environment regarding specific issues would be essential.
- 6. Reassess Proposed Scope of Regulations (1- 2 Months).** After the initial research period, we would need to reassess the regulations' purpose, scope and goals. The process should reflect the information gathered in the steps above and provide staff with a clear objective and outline for the drafting process.
- 7. Drafting Proposed Regulations (2 - 3 Months).** EAC staff will need to take all information gathered during the process and the scope determined by the Commissioners and produce concise and explicit regulations for NVRA.
- 8. Consult with Chief State Election Officials (1 -2 Months).** The NVRA requires the EAC to consult with chief state election officials before issuing regulations. This may be done by sending each a draft and soliciting written comments or convening a conference on the subject. Another alternative is conducting a virtual meeting on our Web site.
- 9. Paperwork Reduction Act (PRA) Process (3 -5 Months).** As we collect information from the States (for the report to Congress) and the public (through the voter registration form), the PRA applies. It is important to note that the FEC is exempt from the PRA and this made it easier for them to make changes to the form and collect information from states in a timely manner. EAC is not exempt from the PRA, which is why which means we must add at least an additional 3 to 5 months to the entire process.
- 10. Publication for Public Comment (3 – 4 Months).** Rule making requires a public comment period. EAC should expect this period to be at least 90 days, given the importance of the issue. During this period, EAC may want to hold additional public hearings regarding the proposed regulations.
- 11. Review of Comments & Re-write of Regulation (2 – 3 Months).**
- 12. Publication of Final Rule.** Final rules are usually effective 30 days after they are published in the *Federal Register*.

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- 13. New National Voter Registration Form (1 Month).** Based upon EAC determinations in revised regulations, staff must create a new federal form incorporating those revisions. The EAC must be able to sufficiently describe or outline the form (beyond the regulatory requirements) such that it may be able to contract for its final design.
- 14. Professional Design (2 – 4 Months).** Must contract with graphic experts to ensure the form is accessible, practical, efficient, and readable.
- 15. Public Input/Chief State Election Official Input (2 – 6 Months).** Similar to the processes above, the EAC shall create a plan to gather feedback on the draft form. NVRA requires feedback from Chief State Election Officials. Hearings, publications, and meetings may be used to seek input from the public and interest groups.
- 16. Paperwork Reduction Act Process for the Federal Form (3 – 5 Months).** The Federal Form collects data from citizens, thus the form must be cleared pursuant to the PRA.
- 17. Design of Web Based Form.** With little additional effort, the EAC could create a web based, electronically fillable form.

NVRA GUIDANCE (*Total time – 8-12 Months*). The NVRA requires the EAC to provide information to states regarding their responsibilities under the statute. NVRA was passed well over a decade ago. As time passes and new legislation (like HAVA) is implemented, the focus of the election community has moved away from the NVRA. At the same time, the requirements of HAVA (such as the statewide voter registration databases) impacts how NVRA is administered. Following in the footsteps of the FEC, the EAC should develop guidance on implementing the NVRA. EAC's guidance should reflect both NVRA and HAVA requirements and provide guidance for the proper administration of the voter registration process.

- 1. Scope of Guidance (1-2 Months).** This will be determined by the scope of the regulations created by EAC. The guidance should give states a clear understanding of how to properly implement the new regulations and how new regulations may differ from previously set federal policy on specific issues.
- 2. Research/Information Gathering/Working Groups/Hearings (6-8 Months).** The research and production of guidance should happen simultaneously with the development of new regulations. This is very important so that the lag time between the issuance of final regulations and guidance on how to implement those new regulations is shortened as much as possible.
- 3. Publication of Final Guidance.**